

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 242 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHANBHAI POLABHAI PATEL & 12

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner

MR DP JOSHI, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/12/98

ORAL JUDGEMENT

1. It is the case of the petitioners that the land in question came to be granted in the year 1940 in favour of one Patel Ukabhai Thakarshi on payment of Nazrana and said Ukabhai Thakarshi sold the same to one Patel Vaghji Karamsi by a sale-deed dated 27/4/1954 and said Vaghji Karamsi sold the same to the petitioners by sale-deed dated 11/3/1958. Mutation entry no. 1394 was effected

on 14/12/1981 and was certified on 15/2/1982. It is the case of the petitioners that the Deputy Collector, Rajkot confirmed the mutation entry by rejecting revision application as per his order dated 31/3/1986. However, the Collector, Rajkot took the mutation entry in revision and cancelled said entry by his order dated 30/7/1993 in Revision No. 15 of 1993. The Secretary to the Government of Gujarat, Revenue Department (Appeal), Ahmedabad, dismissed the revision application filed by the petitioners against the said order. That is how the petitioners are before this Court.

2. It is asserted by the petitioners that one suit bearing Civil Suit No. 853 of 1985 was required to be filed in the Court of the Civil Judge (J.D.) Rajkot against Gujarat Industrial Development Corporation, Ahmedabad, Gujarat Industrial Development Corporation, Rajkot and one Mohanbhai Polabhai and in that suit declaration to the effect that the land in question belonged to the petitioners was granted. However, the Government does not appear to be a party to the said decision. It is next contended by the petitioners that the Competent Authority and Deputy Collector, Rajkot also held that the land in question belonged to the petitioners. This is proposed to be shown by order Annexure-D dated 9/5/1991 passed in ULC Case No. 6(1) 3965.

3. Rule was issued and made returnable on 8/2/1995. Now the matter has come up for final hearing before this Court.

4. I have heard the learned advocate for the petitioner and Ld. A.G.P. for the State. It is not in dispute that the impugned orders relate to mutation entry No. 1394 dated 14/12/1981. As against the said entry the Government claims the land in question to be the land which is alleged to belong to the Government. In the background of the facts which have been asserted by the petitioners in this petition it has to be observed that the Government is required to take/initiate proceedings u/S. 37 of the Bombay Land Revenue Code, 1879 [more particularly section 37(2)], if the Government wants to claim right over the land in question. Till that is done mutation entry no. 1394 dated 14/12/1981 as certified on 15/2/1982 cannot be reversed in its entirety. Proper course would have been to keep the entry as a disputed entry. Following order is, therefore, passed :-

The entry which has been sought to be reversed by
the impugned order will remain as a disputed

entry and will not affect the substantive rights of the petitioners as well as the Government. It will be open to the Government to take/initiate proceedings u/S. 37(2) of the Bombay Land Revenue Code and as and when such proceedings are taken/initiated, it will be open to the petitioners to defend the same in accordance with law. Endorsement of this decision will be made in the record of rights. Subject to these directions rule is discharged. No order as to cost.

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